



Federal Communications Commission
Washington, D.C. 20554

October 9, 2003

Dennis F. Begley
Reddy, Begley & McCormick
2175 K Street, N.W. Suite 350
Washington, D.C. 20037-1803

Dear Mr. Begley:

This is in response to a petition for rule making that you and Marissa G. Repp, Esq., filed on behalf of Rasp Broadcasting Enterprises, Inc., licensee of Station WJZE(FM), Channel 247A, Oak Harbor, Ohio and Citicasters Licenses, Inc., licensee of Station WRVF(FM), Channel 268B, Toledo, Ohio.

The foregoing licensees propose that (1) Channel 247A be reallocated from Oak Harbor, Ohio to Genoa, Ohio, and (2) contingent on Commission approval of (1), that Channel 268B be reallocated from Toledo, Ohio, to Oak Harbor, Ohio, pursuant to Section 1.420(i) of the Commission's Rules. The licensees state that there will be no change in the transmitter sites of either of their existing stations and that the proposed channel reallocations neither create any new short spacings nor exacerbate any existing short spacings. Our engineering study of the licensees' reallocation proposals discloses that, operating on Channel 247A at Genoa, Ohio, Station WJZE would be short spaced by 15.8 kilometers to Station WMEE(FM), Channel 247B, Fort Wayne, Indiana. The same short spacing already exists, but Station WJZE has been allowed to operate on its present channel because it provides equivalent protection to Station WMEE pursuant to Section 73.215 of the Commission's Rules. In this regard, the Commission considers a reallocation of a channel to a new community to be a new allotment. Since new allotments are not allowed for a proposal that is short spaced, the Commission does not ordinarily grant a rulemaking request for a change of community of license to a licensee that is operating pursuant to a grant made pursuant to Section 73.215 of the Rules.¹

Traditionally, the Commission's policy is to grant no waivers of the spacing requirements in considering the allotment of an FM Channel. The Commission has created a limited exception to that policy to allow a station that complied with relevant Commission spacing rules at the time it received its construction permit, but became technically "short spaced" under new rules created after the station had been authorized, to change its community of license without changing its transmitter or technical facilities.² In *Killeen and Cedar Park, Texas* ("Killeen"),³ the Commission created a further exception to the usual policy that is limited to a situation in which (1) a station that wants to change its community of license is short spaced to a pre-1964 grandfathered station and/or other stations that had been granted pursuant to Section 73.215 of the Commission's Rules; (2) the station in question does not propose to change its transmitter site or technical facilities and does not propose to utilize contour protection for any station, and (3) the proposed change in community of license creates no new short spacing and no existing short spacing would be exacerbated.

¹ See *Albemarle and Indian Trail, North Carolina*, 16 FCC Rcd 13876 (M.M. Bur. 2001) ("Albemarle").

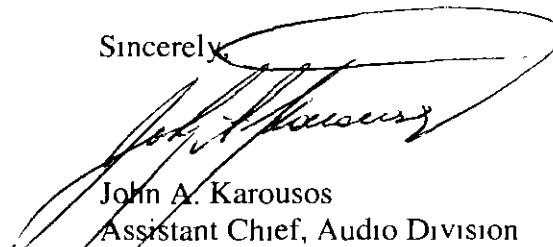
² See *Newnan and Peachtree City, Georgia*, 7 FCC Rcd 6307 (M.M. Bur. 1992) and cases cited in paragraphs 3 and 4 of *Albemarle*.

³ 15 FCC Rcd 1945 (M.M. Bur. 2000).

Unlike the situation in *Killeen*, Station WJZE received its current authorization pursuant to a Section 73.215 contour protection grant. The Commission has stated its reluctance to grant a waiver of the short spacing rules at the allotment stage when the station requesting the waiver has received its current grant pursuant to a voluntary use of Section 73.215.⁴ Thus, unlike a pre-1964 grandfathered, short spaced station, a short spacing allowed pursuant to Section 73.215 of the Rules is treated differently when it is the result of a voluntary decision by a station to move to a short spaced site and provide contour protection rather than to utilize a fully-spaced site. Although such short spacings are permitted at the application stage, they are not allowed at the allotment stage, unless the licensee who wishes to obtain a waiver of the short spacing rules can demonstrate compelling public interest benefits that derive from its proposal. We have considered all the arguments in the licensees' petition for rule making and do not find any such compelling public interest benefits in their petition.⁵

In light of the foregoing, the petition for rule making filed on behalf of Rasp Broadcasting Enterprises, Inc., licensee of Station WJZE(FM) and Citicasters Licenses, Inc., licensee of Station WRVF(FM), is being returned as unacceptable for filing.

Sincerely,



John A. Karousos
Assistant Chief, Audio Division
Media Bureau

⁴ See *Albemarle*, *supra*, 16 FCC Rcd at 13879

⁵ The fact that, prior to filing the application in which Station WJZE requested Section 73.215 processing, Station WJZE encompassed Oak Harbor with its projected 70 dBu contour without causing any short spacings, is not relevant to the case before us.